IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22..03..2007

CORAM

THE HONOURABLE MR.A.P. SHAH, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.Nos.9617 to 9622, 9821 to 9823, 9842, 9851,9852,9869, 9809 and 9875 of 2007
and
M.P.No.1 of 2007to M.P.No.1 of 2007 in WP.NO.9617 to 9622 of 2007,

W.P.No.9617/2007

Eastern Common Effluent Treatment
Company Private Limited,
represented by its Director,
R. Gunasekaran, S.F.No.3/1 & 4/2,
Kasipalayam, Nallur Village,
Vijayapuram Post, Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9618/2007
Arulpuram Common Effluent Treatment
Company Private Limited,
represented by its Director
R. Muthusamy, Tirupur 641 606. .. Petitioner

Vs.

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1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9619/2007

Rayapuram Common Effluent Treatment
Plant Private Limited,
represented by its Managing Director
S. Sivasamy, Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9620/2007

Kallikadu Common Effluent Treatment
Plant Private Limited,
represented by its Managing Director
R.C. Sampathkumar, Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,

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No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9621/2007

Tirupur Murugampalayam Common
Effluent Treatment Company Private Limited,
represented by its Director
P. Arun, Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9622/2007

Mangalam Common Effluent Recycling
Technologies India (P) Limited,
represented by its Managing Director
M. Kanagaraj, Mangalam 641 663. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

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2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9821/2007

Kasipalayam Common Effluent Treatment
Plant Private Limited,
represented by its Chairman
N. Natrayan, Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9822/2007

Kunnankalpalayam Common Effluent
Treatment Plant Private Limited,
represented by its Director
R. Srinivasan, Tirupur 641 605. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

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2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9823/2007

Chinnakarai Common Effluent Treatment
Plant Private Limited,
represented by its Chairman,
K. Subramaniam, Tirupur 641 605.
.. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9842/2007

Veerapandi Common Effluent Treatment
Plant Private Limited,
represented by its Vice Chairman
Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

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2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601. .. Respondents

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W.P.No.9875/2007

Sirupooluvapatti Common Effluent Treatment
Plant Private Limited,
represented by its Managing Director
N.V. Murthi
Tirupur-3. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9809/2007

Park Common Effluent
Treatment Plant, (P) Ltd.,
represented by its Managing Director
A.R. Surendhiran
Tirupur 641 603. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
represented by its Superintending Engineer
Coimbatore Electricity Distribution Circle
Coimbatore .. Respondents

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W.P.No.9851/2007

S. Periyapalayam Common Effluent
Treatment Plant Private Limited,
represented by its Chairman
T.P. Gnanasundaram, Tirupur-7. .. Petitioner

Vs.

1. The Chairman,
The Tamil Nadu Pollution Control Board,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601.

3. Tamil Nadu Electricity Board,
rep. by its Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore. .. Respondents

W.P.No.9852/2007

Vettuvapalayam Common Effluent
Treatment and Recycling Plant (P) Ltd.,
represented by its Chairman,
Tirupur 641 606. .. Petitioner

Vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kumaran Complex, Tirupur 641 601. .. Respondents

W.P.No.9869/2007

Angeripalayam Common Effluent
Treatment Plant,
Rep. by its Managing Director
S.F.No.89, CETP Garden,

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Kanjampalayam,
Pitchampalayampudur (PO),
Tiruppur 641 603,
Coimbatore District. .. Petitioner

vs.

1. The Tamil Nadu Pollution Control
Board, rep. by its Chairman,
No.76/100, Anna Salai, Guindy,
Chennai 600 032.

2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Tirupur 641 601. .. Respondents

For Petitioner in : Mr. Vijay Narayan
WP.No.9617 Senior Counse for
to 9622/07 Mr.P. Senthil Kumar

For Petitioner in : Mr.V. Kalyanaraman
WP.No.9809/2007

For Petitioner in : Mr.N.R. Chandran
WP.No.9821 Senior Counsel for
to 9823 /2007 Mr.N. Kulandaivelu

For Petitioner in : Mr.P.L. Narayanan
WP.No.9842/2007
WP.No.9869/2007 &
WP.No.9852/2007

For Petitioner in : Mr.K. Raja
WP.No.9875/2007
WP.No.9851/2007

For Respondents : Mr.R. Viduthalai
Advocate General for
Mr. Ramanlal, AGP.

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Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus forbearing the respondents 1 and 2 from calculating and collecting fine from the Member Units of the petitioner in excess of 12 days for the month of January 2007 and 19 days for the month of February 2007. (W.P.No.9617, 9618, 9619, 9620, 9621, 9622/07)

in excess of 6 days for the month of January 2007 and 12 to 19 days for the month of February 2007 (W.P.NO.9821/07)

in excess of 5 days for the month of January 2007 and 3 to 17 days for the month of February 2007 (W.P.9822/07)

in excess of 8 days for the month of January 2007 and 8 to 19 days for the month of February 2007 (W.P.No.9823/07)

Forbearing the Respondents from the closing the Petitioner (ETP and its member unit. (W.P.No.9842/07, 9852/07, 9869/07

in excess of 5 days for the month of January 2007 and 8 to 19 days for the month of February 2007 (W.P.9851/07)

in excess of 10 days for the month of January 2007 and 19 days for the month of February 2007 or for the days when the member units of the Petitioner did not work (w.P.9875/07)

in excess of 12 days for the month of January 2007 and 19 days for the month of February 2007 (W.P.9809/07)

C O M M O N  O R D E R

(Order of the Court was made by K. CHANDRU, J.)

The petitioners in these writ petitions were admittedly party to the judgment of the Division Bench of this Court made in W.P.Nos.29791 of 2003 and 39368 of 2003, which were disposed on 22.12.2006 in Noyyal River Ayacutdars Protection Association vs. The Government of Tamil Nadu, Represented by its Secretary and others. In those writ petitions, apart from several other directions, this Court imposed fine on the Common Effluent Treatment Plants [for short, 'CETPs'] on the basis of 'polluter pays principle'. Paragraph 30(a)(i) of our judgment dated 22.12.2006 reads as follows:

Para 30: "(a) The CETPs are given time up to the 31st of July, 2007 to achieve the Zero Liquid Discharge (ZLD) of trade effluents subject to the following conditions-

(i) The concerned CETPs are directed to pay a

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fine on pro rata basis at the rate of six paise per litre from 1st January, 2007 to 31st March, 2007; at the rate of eight paise per litre from 1st April, 2007 to 31st May 2007; and at the rate of ten paise per litre from from 1st June, 2007 to 31st July, 2007. The fine amount payable by the respective CETPs shall be arrived at by multiplying the fine amount i.e., six, eight, or ten paise, as the case may be, by the total quantity of discharge of each Member Units of CETP as per the consent certificate or as the quantity found in the application for consent and also by the total number of working days in a month. The fine amount thus calculated shall be paid by the respective CETPs on the last date of every month. In case the CETPs or any of them commit any default in payment of fine, the Pollution Control Board shall direct closure of such defaulting CETP and the Member Units and also disconnect the power supply to such defaulting CETP and the Member Units."

[Emphasis added]

2. According to the petitioners, while they have no quarrel with reference to the payment of fine, their only concern is about making payments of fine amount even on days when the units were not in operation. Therefore, each of the writ petitioner has stated that during the month of January, the units were closed on many days and they had only worked for 12 days during January, 2007 and in Februrary, 2007, only for 19 days and therefore, when they were asked to pay fine based upon the total number of working days, they had calculated the fine amounts on the basis of the days they had actually operated the units and not on the basis of the number of available working days for the months of January and February, 2007.

3. Therefore the present batch of writ petitions were filed several CETPs with a prayer for the issuance of writ of mandamus forbearing the Tamil Nadu Pollution Control Board [for short, 'TNPCB'] from calculating and collecting fine from the member units of the petitioner/CETPs in excess of the actual days operated by them for the months of January and February, 2007.

4. It is seen that in some petitions, interim orders dated 15.3.2007 were passed by a Division Bench of this Court allowing them to deposit certain amounts and the Board was restrained from taking any coercive steps. The writ petitions were not admitted and all the writ petitions in which interim orders were given as well as other writ petitions were came to be posted before us.

5. We have heard Mr. N.R. Chandran, learned senior counsel

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appearing for some of the petitioners and the other respective counsels for the petitioners in other writ petitions and Mr. R. Viduthalai, learned Advocate General appearing for Mr. Ramanlal, learned counsel for the T.N. Pollution Control Board, and have perused the records.

6. Learned Advocate General raised a preliminary objection as to the maintainability of the writ petitions. According to him, though the writ petitioners were all parties to the earlier proceedings which culminated in the final judgment dated 22.12.2006 and the petitioners, being party to those writ proceedings, cannot file another set of writ petitions questioning the very basis of the order passed by this Court earlier and on this short ground, these writ petitions deserve to be dismissed. He pointed out that the core issue of the writ petitions was resolved by imposing sanction on the polluting Units and after the direction found in para 30(a)(i) galvanized the Units to make the CETPs operational. This was evident from the fact that number of Units have now come up before this Court with permission to resume operations with R.O. Plants which will have Zero Liquid Discharge (ZLD).

7. Per contra, Mr. N.R. Chandran, learned Senior Counsel appearing for some of the petitioners submitted that there was no time for them to file a review petition / clarification petition and since the procedure involved therein may take considerable time, they had filed the present writ petitions in order to get over the interim orders, and if this Court has any objection with reference to the form in which the present writ petitions are filed, then this Court can treat these petitions as petitions for clarification and should not take a technical view of the matter.

8. We are not impressed with the submission made by the learned counsel for the petitioners. In the name of seeking clarification of the earlier judgment, no party can be allowed to file fresh writ petitions against the very judgment in which the petitioners themselves were parties, Such practice is wholly reprehensible and can never be entertained by any Court.

9. In AIR 1967 SC 1 [Naresh Sridhar Mirajkar v. State of Maharashtra] a Bench consisting of nine Judges of the Supreme Court held in paragraph 38 of the judgment, which is as follows:

> "When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the arty aggrieved by the decision of the

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Judge takes the matter up before the appellate Court. ...
What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by Court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Ar.19 (1)."

10. The Supreme Court in (1986) 1 SCC 100 [Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri] clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case.

11. Further, the Supreme Court in its decision reported in (1990) 2 SCC 715 [Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others] in paragraph 35 observed as follows:

Para 35: "... The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution."

12. The Supreme Court in its decision reported in (2002) 4 SCC 388 [Rupa Ashok Hurra v. Ashok Hurra and another] while devising a mechanism of curative petition, dealt with the power of the Court to issue writ against one another and in paragraph 7, it was held as follows:

Para 7: "Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior courts/tribunals, in our view, on principle a writ of certiorari cannot be issued to coordinate courts and

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a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court."

13. Apart from this, it must also be stated that some of the writ petitioners had already filed a review application being Rev. A. No.14 of 2007 before this Court seeking review of our judgment dated 22.12.2006 and the same was dismissed by order dated 27.02.2007. In the backdrop of the same, we have no hesitation to hold that the writ petitions are really not maintainable and the conduct of the petitioners in filing petition after petition so as to nullify the effect of the earlier order is highly unwarranted and deserves strong condemnation.

14. In the averments contained in the affidavit filed in support of the petitions, an assertion has been made by the petitioners that they had actually paid the fine amount as per our earlier judgment dated 22.12.2006 and they are not liable to pay any further amount in excess and also for the days in which the CETPs were not in operation. If the petitioners are very confident about their assertion, they need not have rushed to this Court and obtained interim orders without even getting the writ petitions being admitted.

15. In order to give a quietus to the whole controversy which has been raised, we wish to make it clear that there is no ambiguity in the order passed by us on 22.12.2006, more particularly, the direction found in paragraph 30 therein. Anticipating such doubts may be raised by the CETPs, we have made directions to calculate the capacity of each CETPs on the basis of the consent letter issued by the T.N. Pollution Control Board with reference to the quantity of discharge in respect of each member. Further, without there being any further uncertainties on the issue of total days worked, this Court passed the order with reference to the total number of working days in a month only on the ground that there are statutory holidays since the units are bound to declare certain dates as weekly offs in terms of the labour enactments such as Factories Act, etc. and we thought we should not fasten any liability on statutory holidays.

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We were also conscious of the fact that some of the units were operating on all seven days in a week with appropriate permission from the Labour Department. Only in that backdrop, it was stated that the number of working days of a month must be calculated and this can never be understood as the actual days operated by any unit.

16. Considering the fact that the directions found in paragraph 30(a)(i) only covers a transitional phase from 1.1.2007 to 31.7.2007 and the accelerated fine was imposed as 6 paise per litre for the first three months, 8 paise for the next two months and 10 paise for the last two months, this Court was constrained to impose a fine. Even on the question of imposition of fine, while it was contended that the fine amount should be arrived at the rate of 10 paise per litre for the entire period by the Monitoring Committee and when the Noyyal Ayacutdars Protection Association (writ petitioner in the main petition), demanded for immediate closure of all the units, this Court struck a balance and provided an accelerated increase of 2 paise at three intervals and fixed 6 paise per litre as fine as minimum starting point and due to consideration of overall matters.

17. Having got the benefit of fixation of lesser rate, it was really unethical on the part of the CETPs to come before this Court with a fresh batch of writ petitions and seek for a direction to pay the lesser amount. If this is permitted, it would amount to rewriting our earlier judgment dated 22.12.2006. Considering the fact that our judgment dated 22.12.2006 has become final and a comprehensive review application has also been dismissed, it is improper on the part of the writ petitioners to file fresh batch of cases and try to put holes in our earlier judgment so as to nullify the effect of the judgment. It is out categorical finding that the writ petitioners have been polluting Noyyal river for all these years and are liable to pay fine on the basis of 'polluter pays principle'. It is not open to them to raise any further contention on the question of fine amount imposed on them.

18. Under these circumstances, all the writ petitions lack in merits and are liable to be dismissed and are accordingly dismissed. In view of the dismissal of the writ petitions, the interim order dated 15.3.2007 does not survive and that also stands vacated.

19. At this juncture, the learned counsel for the petitioners requested that the time limit for paying the fine amount had expired and they want further extension of time. In view of the overall circumstances of the case, we hereby direct the petitioners to pay the arrears of the fine amounts on or before 31.3.2007 for the months of January and February, 2007 and comply with the further conditions found in paragraph 30(a)(i) of our earlier order dated

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22.12.2006 without raising any further objection. If any unit defaults on this condition, the default clause found in our judgment dated 22.12.2006 will stand automatically revived. All the Miscellaneous Petitions will also stand closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Chairman,
   Tamil Nadu Pollution Control Board,
   No.76/100, Anna Salai, Guindy,
   Chennai 600 032.

2. The District Environmental Engineer,
   Tamil Nadu Pollution Control Board,
   Kumaran Complex, Tirupur 641 601.

3. The Superintending Engineer,
   Tamil Nadu Electricity Board,
   Coimbatore Electricity Distribution Circle,
   Coimbatore

6 ccs to Mr.P. Senthil Kumar, Advocate, R. 18192
3 cc to MR.N. Kulandaivelu, Advocate, sR. 18191
3 ccs to Mr. P.L. Narayannan, Advocate, Sr. 18109 , 18112, 18108
1 cc to the Government Pleader, sr. 17860

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